

*Osberg v. Foot Locker, Inc., et al.*, 07-cv-01358 (KBF) (S.D.N.Y.)

## **Joint Pretrial Order**

**July 1, 2015**

## **Exhibit 11B**

## **Declaration of Ada Cardona**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**GEOFFREY OSBERG**

**On behalf of himself and on  
behalf of all others similarly situated,**

**Plaintiff,**

**- against -**

**FOOT LOCKER, INC.,**

**FOOT LOCKER RETIREMENT PLAN,**

**Defendants.**  
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**Case No.: 07 CV 1358 (KBF)**

**DECLARATION OF ADA CARDONA**

I, Ada Cardona, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. My name is Ada Cardona. I live in West Palm Beach, Florida. I am 78 years old.

I worked for Woolworth from 1957 – when I started at the first Woolworth store to open in Puerto Rico – until October 1997, when the Woolworth store in the Palm Beach mall that I had worked in since 1968 closed. I was 60 years old when my employment with Woolworth ended. For the majority of the time that I worked at Woolworth, I worked as a bookkeeper.

2. I was a diligent employee throughout my time working at Woolworth. I had only 14 absences during the 40 years that I worked for the company.

3. I am currently employed at a Macy's store in Palm Beach. I am taking time off of work to testify at trial. When I retired from Woolworth in 1997, I elected to receive a monthly annuity for the rest of my life. The monthly annuity that I receive from Woolworth after taxes is about \$477 per month. I work at Macy's to supplement my Woolworth pension and my monthly Social Security check.

4. I am testifying for myself and for others who worked for Woolworth because I believe that what Woolworth did to its employees with regard to the pension was wrong. I now know that I was the victim of a benefit freeze during 1996 up until the time I stopped working for the company in October 1997. I had no idea that this was happening based on what Woolworth told me at the time about the pension plan.

5. Although I received some communications about the Plan in the mail between late 1995 and 1997, none of them told me that my benefit was going to be frozen or that it might be frozen. Nothing that I read in any of those – the September 1995 announcement letter, the November highlights memo, the 1996 and 1997 pension plan statements, and the summary plan description – gave me any idea that something like that would happen. The annual benefits statements showed me that my benefit was growing and that was my understanding.

6. I didn't understand all the details about the pension plan while I was working. But I read everything that I received about the plan. I understood from what I was sent that my benefit was growing each year that I worked for Woolworth. I expected that when I retired, my pension would be based on all my years working for the company.

7. From the time that I received the letter in 1995 saying that Woolworth was excited to announce the changes to the pension, I thought my benefit would continue to grow after those pension changes. There was nothing that told me otherwise until I received a notice in the mail about this lawsuit.

8. It was a big surprise to me to learn that I didn't get any credits toward my pension during 1996 and 1997. During that time period, consistent with earlier years, I regularly worked overtime to help grow my pension. The pension plan was important to me and I was focused on growing it to make sure that I could retire with a good pension. I didn't want to leave

Woolworth any earlier than I did mostly because I wanted my pension to keep growing. I was shocked when I learned through this lawsuit that my pension had been frozen in 1995 and that my benefit had not been growing based on my work in 1996 and 1997.

9. There were no meetings at my Woolworth store or at other Woolworth locations where I was told that a benefit freeze would happen. There were also no meetings to explain the pension when my store was closed. All of the information I received about the pension while I worked at Woolworth was from the documents the company sent me and other employees. Although some of the handful of documents I received told me that I could call Human Resources about any questions I had about the pension, I didn't think there was anything I had to be worried about that would make me need to call.

10. When my Woolworth store closed in 1997, I elected an annuity form of payment. Part of the reason that I did that was that I trusted Woolworth to pay me the pension I was owed for the rest of my life. My understanding at the time was that despite my Woolworth store closing, the overall company was doing well and would continue to pay me a monthly annuity for the rest of my life. For the last 17+ years, I have received that annuity each month.

11. In 2003, I contacted the company to double-check that my benefit calculation was done correctly. I did so after speaking with a former co-worker who I learned was getting a larger annuity amount than I was getting. I contacted the company at the time because I wanted to make sure there weren't any mistakes and that Woolworth had used the right salary amounts when doing the calculations. Many months after I made that request, I received some calculation information from the company in the mail that I looked over. A copy of what I remember being sent is the document FL-OSB 017616 to FL-OSB 017618 (PX160). It looked to me like all of the W-2 compensation amounts listed through my 1997 retirement date were correct and I saw

that the end result number was the same annuity amount I was getting before taxes of \$593.76. I don't recall getting a cover letter that walked me through the calculations, but I was satisfied that the compensation amounts shown and the final number were correct.

12. I did not understand the calculation materials I was sent to be telling me that my pension benefit had not been growing during 1996 and 1997. I did not see that stated anywhere in the document. No one mentioned that fact to me on the phone when I called either (including when I later followed up because it took a long time for the written response to be sent to me). I do not recall ever getting the calculation printout or anything like it at any earlier time, including when the store closed in 1997 and when I chose to start my annuity.

13. After the Woolworth store closed in October 1997, I have been working continuously since then. I worked for J.C. Penney for 15.5 years until 2012. Since I left J.C. Penney, I have been working at Macy's. I still rely on my Woolworth pension for income.

Dated: July 1, 2015

  
Ada Cardona